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Luther D. Thomas, Clerk

By: J.C.C.
Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EARTHLINK, INC.,

Plaintiff,

v.

CASE NO. 1 03 CV 2559 JOF

ALBERT AHDOOT; ALYXSANDRA SACHS;
NET GLOBAL MARKETING, INC.; ANDY
POPE; SCOTT MASLOWE; FRED LUSKY;
DEBBIE CAWDREY; NETBENDERS, LLC;
ISN, LLC; MARC MILLINE a/k/a MARK
VALENTINO a/k/a EMARKETING
SOLUTIONS; DAMON DECRESCENZO;
DAVID BURSTYN; PATHING NETWORKS,
INC.; HERBAL GROUPS, INC.; PAT
GALVIN; JOHN DOES 17-50; STEVE
GOODWIN; AND DEREK GOODWIN,

Defendants.

ORDER OF PERMANENT INJUNCTION AGAINST
DEFENDANTS DECRESCENZO AND BURSTYN

IT IS HEREBY ORDERED that Defendants Damon DeCrescenzo
("DeCrescenzo") and David Burstyn ("Burstyn") shall be and are
hereby **permanently enjoined** from engaging in "**Prohibited
Conduct**" as that term is defined below.

SCOPE OF PROHIBITED CONDUCT AND OTHER DEFINITIONS

1. "EarthLink" refers to EarthLink, Inc. and its
agents, officers, contractors, directors, shareholders,
employees, subsidiary companies or entities, affiliated or

related companies and entities, assignees, and successors-in-interest.

2. **"Defendant-Related Company"** refers to any person or corporation (past, present, or future) in relation to whom/which Defendant is an agent, officer, contractor, director, owner, shareholder, employee, advisor, partner, or the like.

3. **"EarthLink e-mail address"** refers to any and all e-mail addresses maintained by, registered with, or maintained at or with facilities, resources, or equipment owned or operated by or on behalf of EarthLink. These include all e-mail addresses associated with a domain name composed in whole or in part by "earthlink" or "mindspring".

4. **"Internet e-mail address"** refers to any and all e-mail addresses on the Internet, including those maintained by, registered with, or maintained at or with facilities, resources, or equipment owned or operated by or on behalf of any Internet Services Provider ("ISP"). As used herein, the term "ISP" shall include all entities within the scope of "interactive computer service" ("ICS") as that term is defined in 47 U.S.C. §230(e)(2) and includes but is not limited to providers and sellers of Internet-related e-mail services.

5. **"E-mail," "electronic message,"** and all similar terms shall be given the broadest possible construction herein.

Each such term shall include, but not be limited to, e-mails and other such messages (including "Instant Messages" and the like) effected by use of, or with the assistance of, or via access to the resources, equipment, and/or computer system of any ISP.

6. "EarthLink subscriber" refers to any Internet user with an EarthLink e-mail address.

7. "Internet subscriber" refers to any Internet user with an Internet e-mail address.

8. "Prohibited Conduct" shall mean any and/or all of:

A. Spamming And Co-Spamming.

Knowingly causing, authorizing, participating in, or intentionally or recklessly assisting or recklessly enabling others in the sending of any commercial or promotional messages or solicitations (i.e., "Prohibited Messages") via e-mail to any EarthLink e-mail addresses and/or to any Internet e-mail addresses without the express prior permission by affirmative conduct of EarthLink or the recipient EarthLink subscriber in the case of an EarthLink e-mail address or, in the case of any other Internet e-mail address, the express prior permission by affirmative conduct of all related ISP's and/or that particular Internet subscriber. "Spamming" and "Co-Spamming" shall also include the posting of any commercial or promotional messages to

any newsgroup, bulletin boards, or the like, the intended subject of which is non-commercial and/or which is devoted to a topic unrelated to such postings.

B. Failure To Maintain Remove Request Means For, Or Honor Remove Request From, "Non-Objecting Former Customers".

Knowingly causing, authorizing, participating in, or intentionally or recklessly assisting or knowingly enabling others in the sending of any commercial or promotional messages or solicitations via e-mail to any permitted recipient (i.e., one who has in fact expressly requested to receive such e-mails), where such commercial or promotional message or solicitation does not contain and include:

- (1) the true originating e-mail address (i.e., the sender's true e-mail address); and
- (2) a fully-operational return e-mail address or link to web-site database to which or by which the recipient may respond to Defendant's promotional e-mails with requests that the respective recipient/domain owner/ICS be removed from Defendant's mailing list.

The return e-mail address or web-site link must provide an "instant reply option" (i.e., the requesting party must be able to send the remove request via a click or double-click of the requester's mouse). Furthermore, all "remove requests" must be honored within 24 hours, notwithstanding the manner or means received. To be considered "fully operational" under the terms

of this paragraph, the e-mail address or web site comprising the instant reply option must be up and running for a continuous 30 day period immediately following the sending of the underlying commercial e-mail.

C. Spoofing And Co-Spoofing.

Knowingly causing, authorizing, participating in, or intentionally or recklessly assisting or knowingly enabling others in the use of any false or misleading reference to:

- (1) any ICS, ISP, or Internet subscriber;
- (2) any Internet e-mail address, domain, or domain owner;
- (3) the equipment of that ISP, ICS, Internet subscriber, or domain owner; and/or
- (4) that ICS's, ISP's, or Internet subscriber's computer system or resources

in any electronic message or in a newsgroup posting. The conduct prohibited by this paragraph includes, but is not limited to, the insertion of false or misleading originating e-mail addresses, return or reply e-mail addresses, and/or the manual manipulation or falsification of any e-mail header.

D. Cloaking, Co-Cloaking, And Relay.

Knowingly causing, authorizing, participating in, or intentionally or recklessly assisting or knowingly enabling others in the modification, disguise, elimination, or erasure of the identification of the originating address and/or header of or for any commercial or promotional e-mail sent to an EarthLink subscriber or to an Internet subscriber, or otherwise aiding or assisting in any way to the attempts of the sender of any commercial or promotional e-mail to an EarthLink or Internet subscriber to make impossible or more difficult the identification of the sender. Among the conduct expressly prohibited by this paragraph is any unauthorized use of "third-party relay" in relation to the sending of e-mail, as well as any access to or use of the computer resources of any ISP or Internet subscriber not related to or in privity of contract with the sender and/or the recipient of the relevant e-mail or electronic message.

E. Software Distribution.

The knowing sale, offer, or other distribution of any software that specifically enables or assists in the sending of bulk, cloaked, and/or third-party relayed e-mails.

F. Sale Of E-Mail Addresses.

The knowing sale, offer, or other commercial distribution of one or more e-mail lists containing the address of any EarthLink subscriber and/or other Internet subscriber.


G. Trade Libel.

Knowingly causing, authorizing, communicating, or intentionally or recklessly assisting others in communicating defamatory verbal and electronic statements regarding EarthLink's or any other ISP's products, business goods and/or services.

H. Other Unauthorized Access.

Knowingly accessing, trespassing upon, or using in any way the computer system, resources, servers, and/or equipment of EarthLink or any other ISP other than as is expressly permitted by the concerned ISP. This includes violations of the Terms of Service, Acceptable Use Policy, or the like, of any web site or service.

IT IS SO ORDERED THIS 12th DAY OF April, 2005.



Judge J. Owen Forrester
United States District Court for the
Northern District of Georgia,
Atlanta Division